

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR 05-21-MA
CV 05-1828-MA

Plaintiff,

OPINION AND ORDER

v.

HORACIO GODINEZ-GONZALEZ,

Defendant.

KARIN J. IMMERGUT
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Defendant Pro Se

MARSH, Judge.

The matter before the court is defendant's petition under 28 U.S.C. § 2255 to vacate or correct sentence (doc. 1, doc. 15).

On June 14, 2005, defendant knowingly and voluntarily entered into a plea agreement with the government whereby he pled guilty to two counts of eluding examination and inspection by Immigration Officers and waived his right to appeal. The court sentenced defendant to terms of 6 months imprisonment and 24 months imprisonment on the two counts, to run concurrently.

Defendant now moves the court for an order reducing his sentence by three months for time he previously served in state custody. Defendant does not allege any constitutional error in his sentencing. Nonconstitutional sentencing errors not raised on direct appeal are not reviewable under 28 U.S.C. § 2255.

United States v. Schlesinger, 49 F.3d 483, 485 (9th Cir. 1994).

In any event, once the court accepts a plea, the court is bound by the agreed-upon sentence. Fed. R. Crim. P. 11(c)(1)(C); United States v. Mukai, 26 F.3d 953, 955 (9th Cir.1994). Thus, the court lacks discretion to impose a different sentence. U.S.

v. Cervantes-Valencia, 322 F.3d 1060,1061 (9th Cir. 2003).

The court, therefore, **DENIES** defendant's petition to vacate, set aside, or correct sentence (doc. 1 and doc. 15).

IT IS SO ORDERED.

DATED this 25 day of April, 2006.

/s/ Malcolm F. Marsh
Malcolm F. Marsh
United States Senior District Judge